IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED;25.9.2007

CORAM;

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

W.P.NO.17720 OF 1995
and
W.M.P.No.27965 of 1995

The Dravida Munnetra Kazhagam
Charitable Trust by its
Chairman and Managing Trustee
Thiru M.Karunanidhi ..Petitioner

vs

1.The Government of Tamilnadu
by its Secretary, Revenue
Department, Fort.St.George
Madras 600 009

2.The Assistant Commissioner
(Urban Land Tax), Mylapore
Madras 600004

3.The Special Tahsildar (ULT)
Mylapore-Triplicane Taluk
Madras 600 028 ..Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issue of writ of Certiorarified Mandamus to call for the records of the Government of Tamilnadu in its G.O.Ms.No.939, Revenue, dt.12.10.1995 and to quash the same and to direct the respondents to grant to the petitioner/Trust, the exemption under Sec.27(1) of the Tamilnadu Urban Lad Tax Act, 1966.
(Prayer amended as per order dt.9.11.04 in W.M.P.No.38267/04)

for petitioner : Mr.S.Mohamed Yousuf

for respondents : Mr.Haja Nazirudin,
A.G.P.(Tax)
(for RR1 to 3)

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ORDER

This writ petitioner seeks to challenge G.O.Ms.No.939, Revenue, dated 12.10.1995. The petitioner is a Charitable Trust as has been declared for the purpose of Section 29(k) of the Tamil Nadu Urban Land Tax Act. The said declaration has been made by the Government of Tamil Nadu in G.O.Ms.No.514, Revenue, dated 3.3.1975 which reads as under:

> "Specification of Dravida Munnetra Kazhagam Charitable Trust, Madras as Charitable Institution for purposes of Section 29(k) of the Tamil Nadu Urban Land Tax Act.
>
> .....
>
> G.O.Ms.No.514, Revenue Dated 3.3.1975.
>
> No.II(2), Revenue/958/75 - In exercise of the powers conferred by clause (K) of Section 29 of the Tamil Nadu Urban Land Tax Act 1966 (Tamil Nadu Act 12 of 1966) the Governor of Tamil Nadu hereby specified the Dravida Munnetra Kazhagam Charitable Trust, Madras as a "Charitable" Institution for the purpose of the said Section.
>
> C.V.S.Mani,
> Secretary to Government.'

2. The shorts facts which are required to be stated are that according to the petitioner the Trust was constituted by a deed dated 14.6.1972 which was subsequently modified by supplementary deed dated 18.10.1972. It purchased the property under the registered sale deed dated 2.9.1972 at R.S.No.1402 measuring about 83 grounds and 862 sq.ft. in block No.28, Mylapore Village and Division for the purpose of construction of buildings to fulfil the object of the Trust. Simultaneously, an application was filed under Section 29(k) of the Tamil Nadu Urban Lant Tax Act 1966 (Act 12 of 1966) (hereinafter referred to as `the Act') for being declared as a Charitable Institution. The first respondent by G.O.Ms.No.514, Revenue dated 3.3.1975 declared the petitioner trust as a Charitable Institution under Section 29(k) of the Act. Section 29(k) however underwent an amendment by Act 49/75. The amended section 29(k) required compliance of certain other requirements in order to claim exemption under the said provision. It was under the above stated background a notice came to be issued by the second respondent on 5.7.1978 invoking Section 11(1) of the Act calling upon the petitioner to file objections. The petitioner

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filed its reply on 15.7.1978. An order came to be passed on 3.5.1979 holding that the petitioner was liable to pay Rs.61,833/- towards Urban Land Tax for every fasli year commencing from 1.7.1975. It was pointed out in the said order that while a major portion of the property was vacant land, a small portion was being used as a Petrol bunk and as such by virtue of the amendment of Section 29(k) of the Act, the property was liable to be assessed under the Act. The petitioner challenged the order dated 3.5.1979 in W.P.No.3624/1979. The said Writ Petition was dismissed by the learned single Judge by order dated 13.8.1984. The petitioner preferred W.A.No.900/1984 which was allowed by the Division Bench by order dated 17.4.1989. In the said order, the Division Bench held as under in the penultimate paragraph.

> `However, the question whether in terms of the amended section 29(k)of the Act, the appellant will be entitled to exemption in the light of G.O.Ms.No.514, dt.3.3.1975 has to be examined factually. Therefore, we quash the order of imposition of tax and remit the matter to the respondent for fresh consideration in the light of the observations made above.'

After the order of the Division Bench, on behalf of the petitioner a petition was filed before the second respondent wherein after referring to the order of remand by the Division Bench the petitioner also referred to its application filed under Section 27 (1) of the Act for exemption from payment of Urban Land Tax and sought for favourable orders. Along with the said petition necessary application in the prescribed format claiming exemption under Section 27(1) of the Act was filed furnishing various details as well as the relevant statements of Income and Expenditure for the years commencing from 1986-87 onwards. Subsequently, the second respondent in its notice dated 4.4.1995 called upon the petitioner to produce the audited accounts for the period from 1989-90 to 1992-93 in triplicate. The petitioner is stated to have furnished the above particulars called for by the second respondent. Thereafter, the impugned order in G.O.Ms.No.939 dated 12.10.1995 has been passed. There was also a demand notice from the third respondent dated 14.11.1995 claiming a sum of Rs.9,89,328/- towards Urban Land Tax from the Fasli Year 1385 (1.7.75) to Fasli Year 1400 (30.6.91).

3. Assailing the impugned order of the first respondent Mr.Mohamed Yousuf, learned counsel appearing for the petitioner contended that the said order is a non-speaking order, that the first and second respondents failed to comply with the directions of the Division Bench in its order dated 17.4.1989 passed in W.A.900/1984 and that in any event none of the details furnished by

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the petitioner claiming exemption under Section 27(1) of the Act were considered by the first respondent before passing the impugned order.

4. I have also heard Mr.Haja Nazirudin, learned Additional Government Pleader, appearing for the respondents.

5. Having heard the learned counsel for the respective parties and after perusing material papers placed before the Court including the set of documents filed in the additional typed set of papers at the outset it will have to be held that the impugned order does not seem to have been passed in compliance with the order of the Division Bench dated 17.4.1989 passed in W.A.No.900/1984. At the time when the said order came to be passed by the Division Bench there was no application at the instance of the petitioner under Section 27(1) of the Act. After the order of remand dated 17.4.1989 the petitioner preferred its application seeking exemption under Section 27(1) of the Act on 25.3.1991.

6. While the scope of exemption available under Section 29 (k) of the Act is statutorily provided under the Act, the exemption to be granted under Section 27(1) of the Act will be in exercise of powers of the Act either to grant total exemption or partial exemption if in the opinion of the Government imposition of such Urban Land Tax would cause undue hardship to the applicant. While the exemption if any to be granted under Section 27(1) of the Act is always subject to further modification or even cancellation of such exemption as provided under sub-section (2) of Section 27 of the Act, that is not the case when the statutory exemption provided under Section 29(k) of the Act is made. The stipulations contained in Section 27(1) for granting exemption from the payment of tax are far different from the total exemption to be granted from the provisions of the Act itself as provided under Section 29 (k) of the Act. The criteria varies in very many respects when it comes to the question of grant of exemption under Section 29(k) as from the payment of the whole of the tax or a part of it to be granted under Section 27(1)of the Act. In either case it will have to be held that when a party claims exemption on the premise that such applicant fulfils the criteria as stipulated under Section 29 (k) of the Act or in the event of such an applicant satisfying the State Government the need for grant of exemption from payment of tax as provided under Section 27(1) of the Act, it is imperative that proper and relevant considerations are made either for grant or rejection of such exemption under either of the provisions.

7. In fact for grant of exemption from payment of tax as provided under Section 27(1) of the Act the State Government has issued various G.Os., ending with G.O.Ms.No.1834 dated 29.10.83. A perusal of G.O.Ms.No.1834 discloses that in the various other

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G.Os., referred to therein certain norms and guidelines were prescribed for grant of total exemption from the payment of Urban Land Tax by invoking Section 27(1) of the Act. After setting out the abovereferred to G.Os., under G.O.Ms.No.1834 the following three stipulations have been set out as guidelines which reads as under:

> "3.The following are the existing guidelines and norms for considering the exemption applications:-
>
> 1.The institutions should have been recognised as charitable and exemption granted under section 12A(a)of the Income Tax Act, 1961.
>
> 2.The institutions should spend atleast 90% of its net income towards its objectives and purposes, after deducting all the inevitable charges, like payment of local taxes, repairs and maintenance etc.
>
> 3.The institution should be a public Trust and not a private trust.

8. In contra distinction to such stipulations prescribed by the State Government in exercise of the powers under Section 27(1) of the Act, Section 29(k) contemplates grant of exemption as stipulated in the provision itself which is to the following effect:

> '(k)subject to the provisions of this section, any urban land actually used for religious, charitable or philanthropic purposes by such religious, charitable or philanthropic institutions, as the Government may, by notification, specify, but not including any urban land owned by such institutions and-
>
> (i) which is vacant, or
>
> (ii)in which buildings from which income is derived have been constructed;'

9. In the background of the abovestated statutory stipulations contained in the Act and the relevant G.Os., when the impugned order is considered, I find that in paragraph 2 of the said order the first respondent by referring to G.O.Ms.No.1834 dated 29.10.1983 rejected the request of the petitioner for grant of exemption from the payment of Urban Land Tax on the ground that the petitioner did not fulfil the requirements of spending 90% of its net income towards its charitable objectives and purpose from the year 1989-90 to 1992-93 and that for the year 1993-94 which has been only 44% of its net income. While examining the correctness of the said order it will have to be stated that while the

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petitioner's claim was for the grant of exemption primarily under Section 29(k) of the Act as per the order of the Division Bench dated 17.4.1989 in W.A.No.900/1984 the petitioner appeared to have also claimed for exemption from the payment of tax under Section 27 (1) of the Act by filing an independent application on 25.3.1991.

10. In such circumstances, if the first respondent were to consider the petitioner's abovereferred to claims, in my considered opinion, there should have been a full-fledged enquiry inasmuch as the consideration would certainly involve very many relevant factors such as the fulfilment of the stipulations contained in Section 29(k) under which the petitioner will have to satisfy that it is a charitable institution, that where any buildings are located in its land no income is derived or that no part of it is kept vacant.

11. Similarly, if it comes to the question of claim for exemption from the payment of tax under Section 27(1) of the Act having regard to the various G.Os., issued by the State Government commencing with G.O.Ms.1834 dated 29.10.83 it should be established that the institution has been recognised as a Charitable Institution and has been granted exemption under Section 12K(k) of the Income Tax Act, 1961, that it is a public trust and that it spends atleast 90% of its net income towards its objectives and purpose after deducting all the inevitable charges like the payment of local taxes, repairs and maintenance. If such stipulations provided under either of the Sections are to be examined necessarily the petitioner ought to have been extended an opportunity to convince the authorities concerned that it is entitled for the grant of exemption either under Section 27(1) from the payment of tax either fully or partially or for the exemption from the provisions of the Act itself as provided under Section 29 (k) of the Act.

12. When the impugned order is analysed in the abovesaid requirement of law to be examined, I am of the view the order does not contain very many details in order to state that such requirements to be examined under the provisions of the Act was even considered, inasmuch as in the first place, there is no reference to the claim for exemption made under Section 29(k) of the Act. On that score itself the impugned order cannot be sustained. In that context it is relevant to state that when the Division Bench passed orders on 17.4.1989 in W.A.No.900/1984 there was a specific direction to the effect that the second respondent should make a fresh consideration in the light of the observations made in the order of the Division Bench. Therefore, it was incumbent upon the second respondent or for the first respondent, if the first respondent is the competent authority to have exercised its authority as expected of under the abovereferred to

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provision, namely Section 29(k) of the Act. Inasmuch as the 1st and second respondents have failed to comply with the direction as contained in the order of the Division Bench dated 17.4.1989 in W.A.No.900/84 as also its failure to pass appropriate order as is expected under Section 27(1) of the Act, the impugned order is liable to be set aside. As consideration of the above factors would involve a detailed examination of facts and figures, it is imperative that the petitioner is given an opportunity of personal hearing to substantiate its claim with necessary materials. Since the issue was hanging fire right from the year 1978 onwards it is just and necessary that the 1st and 2nd respondents shall pass appropriate orders after giving due opportunity to the petitioner expeditiously. With that view while setting aside the order impugned in the writ petition, the 1st and second respondents are directed to consider the claim of the petitioner for exemption either under Section 27(1) or under Section 29(k) of the Act by giving an opportunity of hearing to the petitioner to enable the petitioner to place all the supporting materials and pass orders in accordance with law expeditiously preferably within six months from the date of receipt of the copy of this order.

13. The writ petition is allowed. No costs. Consequently, connected pending W.M.P.No.26965/1995 is also disposed of.

sal

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Secretary,
The Government of Tamilnadu
Revenue Department, Fort.St.George
Madras 600 009

2.The Assistant Commissioner
(Urban Land Tax), Mylapore
Madras 600004

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3.The Special Tahsildar (ULT)
Mylapore-Triplicane Taluk
Madras 600 028

+ 1 cc to Mr. S. Mohamed Yousuf, Advocate SR No. 59615

+ 1 cc to the Special Government Pleader (Taxes), Chennai 104
SR No.59728

LA(CO)
SR/15.10.2007

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